

# QUINCY WETLANDS PROTECTION ORDINANCE

## **18.08.010 - Purpose.**

The purpose of this chapter is to protect the wetlands, related water resources, and adjoining land areas in the city by prior review and control of activities deemed by the Quincy conservation commission likely to have a significant or cumulatively adverse effect upon wetland values; including, but not limited to, the following: Public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution, fisheries, shellfish, wildlife habitat, recreation, aesthetics (the visual quality and appearance of a project and/or quiet enjoyment of undisturbed resource areas), and aquaculture values (collectively, the "wetland values protected by this chapter").

*(Ord. 1987-401 § 1)*

## **18.08.020 - Scope.**

Except as permitted by the conservation commission or as provided in this chapter, no person shall remove, fill, dredge, build upon or alter the following resources or land under said resources or land within one hundred feet of said resources: Any freshwater wetland including any marsh, wet meadow, bog or swamp; any saltwater wetland; any lake, river, pond, stream, drainageway, canal, estuary or the ocean; any bank, beach, dune or flat bordering on said water or wetlands; or any land subject to flooding or inundation by groundwater, surface water, tidal action or coastal storm flowage.

*(Ord. 1987-401 § 2)*

## **18.08.030 - Definitions.**

The following definitions shall apply in the interpretation and implementation of this chapter:

The term "person" includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof, to the extent subject to city ordinances, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents or assigns.

The term "alter" includes, but is not limited to, the following activities when undertaken to, upon, within or affecting resource areas protected by this chapter:

A.

- Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind;
- B.
- Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood-retention characteristics;
- C.
- Drainage or other disturbance of water level or water table;
- D.
- Dumping, discharging or filling with any material which may degrade water quality;
- E.
- Placing of fill, or removal of material, which would alter elevation;
- F.
- Driving of piles, erection or repair of buildings or structures of any kind;
- G.
- Placing of obstructions in water;
- H.
- Destruction of plant life, including cutting of trees;
- I.
- Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water;
- J.
- Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

Except as otherwise provided in this chapter or regulations which may be promulgated thereunder, "resources" is defined as appearing in M.G.L. Ch. 131, Sec. 40, and in 310 C.M.R. 10, effective April, 1983.

*(Ord. 1987-401 § 3)*

#### **18.08.040 - Applications for permits and requests for determination.**

Written application shall be filed with the Quincy conservation commission to perform activities regulated by this chapter and protected by this chapter. The application shall include such information and plans as are deemed necessary by the commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this chapter.

The commission, in an appropriate case, may accept as the application and plans under this chapter the notice of intent and plans filed under the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.

Any person desiring to know whether or not proposed activity or an area is subject to this chapter may in writing request a determination of applicability from the commission. Such a request for determination shall contain data and plans specified by the published regulations of the commission.

At the time of an application or request the applicant shall pay a filing fee specified in regulations of the commission. This fee is in addition to that required by the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40. In addition, the commission is authorized to require the applicant to pay the costs and expenses of any expert consultant deemed necessary by the commission to review the application or request up to a maximum of two thousand five hundred dollars. The commission may waive the filing fee and costs and expenses for an application or request filed by a government agency and shall waive them for a request for determination filed by a person having no financial connection with the property which is the subject of the request.

- A.  
Permit fees are payable at the time of application and are non-refundable.
- B.  
Permit shall be calculated by the commission per schedule below.
- C.  
City, County, State or Federal projects are exempt from fees.
- D.  
No fee is charged for Request for Determination under the law or extensions of Orders of Conditions.
- E.  
Failure to comply with the law after official notification shall result in fees twice those normally assessed.

FEES:

- A.  
Wetlands by-law hearing: twenty-five dollars.
- B.  
Multiple-dwelling units shall be charged twenty-five dollars per dwelling unit.
- C.

Commercial and industrial projects: twenty-five dollars, plus ten dollars charged per every ten thousand dollars of established general construction cost over one hundred thousand dollars.

*(Ord. 1987-401 § 4)*

#### **18.08.050 - Notice and hearings.**

Any person filing an application or a request for determination with the commission concurrently shall give written notice thereof, by certified mail or hand delivery, to all abutters, according to the most recent records of the assessors, including those within one hundred yards of the property lines. The notice to the abutters shall include a copy of the application or information where a copy of the application may be obtained and examined by abutters free of charge.

When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself, shall be sent by the commission to the owner as well as to the person making the request.

The commission shall conduct a public hearing on any application or request for determination, with written notice given at the expense of the applicant, five working days prior to the hearing, in a newspaper of general circulation in the municipality.

The commission shall commence the public hearing within twenty-one days from receipt of a completed application or request for determination. The commission shall issue its permit or determination in writing within twenty-one days of the close of the public hearing thereon. The commission in an appropriate case may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.

The commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the commission in its discretion, or comments and recommendations of boards and officials listed in Section 18.08.060. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed and the commission shall take action on such information as is available.

*(Ord. 1987-401 § 5)*

#### **18.08.060 - Coordination with other boards.**

Any person filing a permit application or a request for determination with the commission shall provide a copy thereof at the same time, by certified mail or hand

delivery, to the city council, planning board, board of appeals, board of health, and building inspector.

*(Ord. 1987-401 § 6)*

#### **18.08.070 - Permits, determinations, and conditions.**

If the commission, after a public hearing determines that the activities which are the subject of the application are likely to have a significant or cumulatively adverse effect upon the wetland values protected by this chapter, the commission, within twenty-one days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the commission shall impose conditions which the commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

The commission is empowered to deny a permit for failure to meet the requirements of this chapter; for failure to submit necessary information and plans requested by the commission; for failure to meet design specifications, performance standards, and other requirements in regulations of the commission; for failure to avoid or prevent unacceptable, significant, or cumulatively adverse effects upon the wetlands values protected by this chapter; and where no conditions are adequate to protect those values. A permit shall expire three years from the date of issuance. Notwithstanding the above, the commission in its discretion, may issue a permit expiring five years from the date of issuance, for recurring or continuous maintenance work by a public agency, provided that annual notification of time and location of work is given to the commission. Any permit may be renewed once for an additional year period, provided that a request for a renewal is received in writing by the commission proper to expiration.

For good cause the commission may revoke or modify a permit issued under this chapter after public notice and public hearing, and notice to the holder of the permit.

The commission in an appropriate case may combine the permit or other action on an application issued under this chapter with the order of conditions issued under the Wetlands Protection Act.

*(Ord. 1987-401 § 7)*

#### **18.08.080 - Regulations.**

After public notice and public hearing, the commission may promulgate rules and regulations to effectuate the purpose of this chapter. Failure by the commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this chapter.

*(Ord. 1987-401 § 8)*

### **18.08.090 - Exceptions.**

The permit and application required by this chapter shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that the structure or facility is not substantially changed or enlarged, provided that written notice has been given to the commission prior to commencement of work, and provided that the work conforms to performance standards in any regulations adopted by the commission.

The permit and application required by this chapter shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the commission prior to commencement of work or within twenty-four hours after commencement, provided that the conservation commission or its agent certifies the work as an emergency project, provided that the work is performed only for the time and place certified by the conservation commission for the limited purposes necessary to abate the emergency, and provided that within twenty-one days of commencement of an emergency project a permit application shall be filed with the commission for review as provided in this chapter. Upon failure to meet these and other requirements of the commission, the commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

Other than stated in this section the exceptions provided in the Wetlands Protection Act shall not apply.

*(Ord. 1987-401 § 9)*

### **18.08.100 - Security.**

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency or official, the commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

"By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the commission. The commission may also accept as security a conservation restriction, easement, or other covenant of enforceable in a court of law,

whether temporary or permanent, executed and duly recorded by the owner of record."

*(Ord. 1987-401 § 10)*

#### **18.08.110 - Enforcement.**

The commission, its agents, officers, and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this chapter, and may make or cause to be made such examinations, surveys or sampling as the commission deems necessary.

The commission shall have the authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, enforcement orders and civil and criminal court actions.

Upon request of the commission, the city council and the city solicitor shall take legal action for enforcement under civil law. Upon request of the commission, the chief of police shall take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer or other officer having police powers, and also including but not limited to the city of Quincy conservation enforcement officer, shall have the authority to assist the commission in enforcement.

Any person who violates any provision of these regulations thereunder, or permits issued thereunder, shall be punished by a fine of not more than one thousand dollars. Each day or portion thereof during which a violation continues shall constitute a separate offense.

In the alternative to criminal prosecution the commission may elect to utilize the non-criminal disposition procedure set forth in M.G.L., Ch. 40, Sec. 21D.

*(Ord. 1987-401 § 11)*

#### **18.08.120 - Burden of proof.**

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable significant or cumulatively adverse effect upon the wetland values protected by this bylaw. Failure to provide adequate evidence to the commission supporting this burden shall be sufficient cause for the commission to deny a permit or grant a permit with conditions.

*(Ord. 1987-401 § 12)*

#### **18.08.130 - Relation to the Wetlands Protection Act.**

This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40, and regulations thereunder.

*(Ord. 1987-401 § 13)*

**18.08.140 - Severability.**

The invalidity of any section or provisions of this chapter shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

*(Ord. 1987-401 § 14)*